

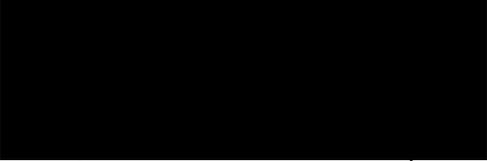


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U.S. Department of Justice  
Immigration and Naturalization Service

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prevent clearly unwarranted  
investigation of...

OFFICE OF ADMINISTRATIVE APPEALS  
425 Eye Street N.W.  
ULLB, 3rd Floor  
Washington, D.C. 20536



File: WAC 99 131 53088 Office: California Service Center

Date: 0 APR 2002  
8 0 APR 2002

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

Petition: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(1)(A)

Public Copy

IN BEHALF OF PETITIONER: Self-represented

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,  
EXAMINATIONS

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, California Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(1)(A), as an alien of extraordinary ability in the arts. The director determined the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

Section 203(b) of the Act states, in pertinent part, that:

(1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

(A) Aliens with Extraordinary Ability. -- An alien is described in this subparagraph if

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(i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,

(ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and

(iii) the alien's entry to the United States will substantially benefit prospectively the United States.

As used in this section, the term "extraordinary ability" means a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor. 8 C.F.R. 204.5(h)(2). The specific requirements for supporting documents to establish that an alien has sustained national or international acclaim and recognition in his or her field of expertise are set forth in the Service regulation at 8 C.F.R. 204.5(h)(3):

Initial evidence: A petition for an alien of extraordinary ability must be accompanied by evidence that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise. Such evidence shall include evidence of a one-time achievement (that is, a major, international recognized award), or at least three of the following:

(i) Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor;

- (ii) Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields;
- (iii) Published materials about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation;
- (iv) Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought;
- (v) Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field;
- (vi) Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media;
- (vii) Evidence of the display of the alien's work in the field at artistic exhibitions or showcases;
- (viii) Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation;
- (ix) Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field;  
or
- (x) Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.

The petitioner seeks to classify the beneficiary as an alien with extraordinary ability as a dance instructor, choreographer, dance competitor and judge. The petitioner has submitted "[d]ocumentation showing [the beneficiary's] continuing demonstration of his 'Extraordinary Ability' in the areas of Dance Competition, Dance Instructor, Dance Competition Judge, and Choreographer." This "documentation" consists entirely of the beneficiary's own resume. This document, essentially a list prepared by the beneficiary, constitutes a claim rather than evidence to support that claim. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. See Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972).

Furthermore, even if the petitioner were to document all of the activities and achievements listed on the beneficiary's resume, such a list would not establish extraordinary ability or sustained acclaim. The petitioner must show that the beneficiary stands at the very top of his field of endeavor. A list of the beneficiary's activities, by itself, does not meet this threshold because it offers no basis for comparison between the beneficiary's achievements and those of others in the field.

The director denied the petition, stating that the petitioner has failed to corroborate any of the claims set forth in the beneficiary's resume, and to establish that the beneficiary is nationally or internationally acclaimed. On appeal, the petitioner states "[t]he [beneficiary] has received [an O-1 nonimmigrant] visa based on previously submitted evidence and we believe that it will be in the best interest of the people of the United States to grant this petition. We will submit additional evidence to prove he meets [the] criteria." The petitioner indicates that he will submit this additional evidence within 30 days. To date, over a year and a half after the appeal was filed on July 21, 2000, the record contains no subsequent submission from the petitioner and we shall render a decision based on the record as it now stands.

Given the absence of any supplemental submission, the petitioner's only substantive assertion on appeal is that the beneficiary "has received visa" (sic), a reference to the beneficiary's earlier receipt of an O-1 nonimmigrant visa. The approval of an O-1 nonimmigrant visa petition on behalf of a given alien does not in any way compel the Service to approve a subsequent visa petition under section 203(b)(1)(A) of the Act on behalf of that same alien. Without the record of proceeding for the nonimmigrant visa, we cannot determine whether the visa was approved in error. The petitioner's assertion that the necessary evidence accompanied the nonimmigrant visa petition does not relieve the petitioner of the responsibility of submitting similar documentation with the immigrant visa petition.

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim and is one of the small percentage who has risen to the very top of the field of endeavor. The petitioner, however, has submitted no documentary evidence to establish that the beneficiary is nationally or internationally acclaimed as an artist within the small percentage at the very top of his field. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. Here, the petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.